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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

CHAPTER 13

JOHN MICHAEL MULHERE, JR.,

CASE NO. 19-23720 (SHL)

DEBTOR

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**AFFIRMATION IN SUPPORT OF DEBTOR'S REQUEST FOR AN
ORDER DIRECTING THE WESTCHESTER COUNTY CLERK TO
TURNOVER PROPERTY OF THE ESTATE TO THE DEBTOR**

TODD S. CUSHNER, an attorney duly licensed to practice before this Court, affirms the following under the penalties of perjury.

1. I am the attorney for the debtor and debtor-in-possession, John Michael Mulhere, Jr. (the "Debtor") herein and as such am fully familiar with the facts and circumstances of this motion.
2. On September 26, 2019, (the "Petition Date") the Debtor, *pro se*, filed the instant chapter 13, case no. 19-23720 (SHL) (the "2019 Chapter 13").
3. In early October, 2019, the Debtor retained the law firm of Cushner & Associates, P.C. as his bankruptcy attorney.
4. The Debtor owns certain real property commonly known as at 2221 Palmer Avenue, Unit #3N, New Rochelle, NY 10801 (the "Primary Residence").
5. On March 27, 2018 the Debtor deposited \$7,000.00 (the "Deposit") with Westchester County Clerk, in order to obtain a stay pending a decision in an action in

Westchester County Supreme Court, John Mulhere v. 2221 Palmer Avenue Corp., Index No. 54043/2018. (Annexed hereto as **Exhibit “A”** is a copy of the Signed Order directing the Debtor to deposit \$7,000.00 and the receipt for same).

6. Section 541(a)(1) of the Bankruptcy Code provides that the filing of a petition in bankruptcy creates an estate consisting of “all legal or equitable interests of the debtor in property as of the commencement of the case.”

7. The \$7,000.00 deposited by the Debtor with the Westchester County Clerk constitutes property of the estate. Furthermore, Schedule C of the Debtor’s petition, demonstrates that the Debtor elected to exempt the \$7,000.00 deposit with the Westchester County Clerk. (Annexed hereto as **Exhibit “B”** is a copy of Schedule C of the Debtor’s petition).

8. Section 362(a)(3) of the Bankruptcy Code prohibits “any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).

9. Section 542(a) of the Bankruptcy Code provides:

Except as provided in subsection (c) or (d) of this section, an entity other than a custodian in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this Title or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

10. Section 543(b) of the Bankruptcy Code provides in part:

A custodian shall deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian’s possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case.

11. The Westchester County Clerk of Court will only release the funds deposited by the Debtor upon issuance of an order by the Bankruptcy Court directing it to do so.

12. In light of the above, Debtor requests that the Bankruptcy Court enter an order pursuant to Sections 105(a), 362(a), 541(a), 542, and 543 of the Bankruptcy Code directing the Westchester County Clerk to turn over the \$7,000.00 deposited by the Debtor with the Clerk of Court to the Debtor as evidenced by the attached receipt of payment into the Court. (See **Exhibit A**).

WHEREFORE, it is respectfully requested that this Court enter an Order pursuant to Sections 105(a), 362(a), 541, 542, and 543 of the Bankruptcy Code directing the Westchester County Clerk of Court to turnover or release to the Debtor funds in the amount of \$7,000.00 identified in the payment receipt (see **Exhibit A**), that were deposited by the Debtor prior to commencement of this bankruptcy case, along with such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
November 20, 2019

Cushner & Associates, P.C.

By: /s/ Todd S. Cushner
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